IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 20 .03.2007

CORAM:

THE HON'BLE MR. JUSTICE P. SATHASIVAM
AND
THE HON'BLE MR. JUSTICE N. PAUL VASANTHAKUMAR

WRIT APPEAL No.1140 of 2002

The Management of Madras Aluminium Co. Ltd.,
Mettur Dam, Salem District. ... Appellant

vs.

1.R.Paulmanickam (deceased)
2.K.Krishnan (deceased)
3.R.Natesan
4.A.Sargunam
5.P.Annadurai
6.R.Chinnappan
7.C.Swaminathan
8.S.Paramasivam(deceased)
9.P.Palanisamy
10.A.Subramanian
11.C.Chengodan
12.T.K.Shanmugham(deceased)
13.K.Natarajan
14.C.Nanjappan
15.K.Shanmugham
16.P.C.Narayanan
17.A.L.Udayashankar
18.P.Selvaraj
19.The Presiding Officer,
Labour Court, Salem.
20.Thangayee
21.Yamunasri(minor), rep. By her mother & guardian, R-20
22.Annapurani
23.Sasikala
24.Mogana
25.Thangamani
26.P.Karthik (minor), rep. By her mother & guardian, R-28
27.P.Rajeswari
28.M.Manimegala
29.Jayambi ammal
30.Gangayammal
31.Kalaiselvi
32.Padmanabhan

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R20 & 21 substituted as legal heirs of deceased 1st respondent
R22 to 25 substituted as legal heirs of deceased 2nd respondent
R26 to 29 substituted as legal heirs of deceased 8th respondent
R30 to 32 substituted as legal heirs of deceased 12th respondent

... Respondents

Writ Appeal filed under Clause 15 of the Letters Patent against the order made in W.P.No.10976 of 1996 dated 26.2.2002. Praying for Issuance of a writ of certiorarified mandamus calling for the records relating to the common order of the first respondent labour court in C.P.Nos.894/94 to 928/94, 3/95 to 6/95 & 10/95 to 13/95 dt 5/2/96 and quash the same in so far as it relates to the petitioners in C.P.Nos.913/94, 897/94, 911/94 926/94, 899/94, 909/94, 910/94, 912/94, 902/94,900/94, 914/94, 915/94, 895/94, 3/95, 10/95, 11/95, 12/95, 13/95 and consequential direct the second respondent to pay the wages from 1/4/92 to October 1994,less the advance given during the period.

For appellant : Mr. AL. Somayaji, Sr.Counsel
for Mr. S. Ravindran

For respondents 2 to 18 & 20 to 32 : Mr. N.G.R. Prasad
for M/s. Row & Reddy

JUDGMENT

(Judgement of the Court delivered by P. SATHASIVAM,J.)

Aggrieved by the order of the learned Single Judge dated 26.2.2002 made in W.P.No.10976 of 1996, the Management of Madras Aluminium Company Ltd., Mettur Dam, Salem District has filed the above appeal.

2. The respondents 1 to 18 herein/writ petitioners joining together have filed W.P.No.10976 of 1996 praying to issue a Writ of Certiorarified Mandamus calling for the records relating to the common order of the Labour Court, Salem in C.P.No.894 of 1994, etc. and quash the same, and consequently, direct the management to pay their wages from 1.4.1992 to October, 1994 less the advance given during the period they worked. According to them, all were employed in the factory of the Madras Aluminium Company at Mettur Dam. From 1.4.1992 all workmen except those who were in-charge of essential services like, security, water supply, sanitation, electricity, etc. were asked not to report for duty. Since the writ petitioners belonged to essential services, they were required to report for duty and they actually worked. The factory resumed its normal operations in October, 1994, when the other workers who were kept idle, also reported to work. During the period between 1.4.1992 and October, 1994 when the factory resumed its normal operations, the petitioners were not paid wages as per their contract of service. Therefore, they filed claim petitions before the Labour Court, Salem, claiming difference between the wages due as per the contract of service less the advance

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given during the said period. On the side of the workers, two persons were examined as W.W.1 and W.W.2 and marked Exs.W-1 to W-5. On the side of the Management, one Subbiah was examined as M.W.1 and Ex.M-1, the Settlement dated 22.9.1994 between the management and workmen was marked. The Labour Court rejected the claim of the workmen on the basis of the settlement dated 22.9.1994 which was one under section 12(3) of the Industrial Disputes Act, 1947 and also on the basis of the notice dated 18.5.1992 (Ex.W-5) and the letter of Management dated 31.10.1994 (Ex.W-4). It is their claim that they were not members of the Union which was signatory to the settlement under Section 12(3) of the Industrial Disputes Act. W.W.2, the Conciliation Officer, who signed the settlement under section 12(3) of the Industrial Disputes Act, stated that he never knew before signing the settlement that there were two sets of workers, one whose services were utilised and other who were kept idle. His crucial admission has not been considered by the Labour Court. Therefore, the notice dated 18.5.1992, is clearly illegal. It is their further grievance that in spite of the relevant materials, the Labour Court accepted the stand of the Management and relying on the settlement, Ex.M-1 and dismissed all the claim petitions filed under section 33-C(2) of the Industrial Disputes Act. Having no other remedy, the petitioners have filed the above writ petition.

3. The learned Single Judge, after finding that since the writ petitioners reported to duty as directed by the Management, the settlement dated 22.9.1994 is not binding on all the workmen, set aside the common order of the Labour Court and directed payment of salaries to all the writ petitioners less the advance already paid to them during the period when they worked. As said earlier, questioning the said common order, the Management preferred the present appeal.

4. Heard Mr.AL.Somayaji, learned senior counsel appearing for the appellant/Management and Mr.N.G.R.Prasad, learned counsel appearing for the respondents/workmen.

5. The only point for consideration in this appeal is, whether the settlement dated 22.9.1994, Ex.M-1 is binding on all the workmen including the writ petitioners and whether the learned Judge is right in accepting the case of the petitioners and quashing the order of the Labour Court?

6. Mr.AL.Somayaji, learned senior counsel for the appellant submitted that the settlement reached in the course of conciliation under section 12 (3) of the Industrial Disputes Act and the said settlement would bind not only those who were before the Conciliation Officer, but also who were not before him. He pointed out that the interest of those workmen who were not represented in the conciliation

proceedings was taken care of by the Conciliation Officer. By pointing out clause (2) of the settlement dated 22.9.1994 (Ex.M-1), he contended that for the period from 1.4.1992 to October,1994, i.e., the date of resumption

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of operation, the workmen shall not be entitled to any wages or other benefits. He further submitted that the Conciliation Officer as well as parties were fully aware that the services of some workmen were utilised during the period from 1.4.1992 to the date of resumption of work and therefore, it cannot be claimed that those workmen were not considered in arriving at the settlement dated 22.9.1994.

7. On the other hand, Mr.N.G.R.Prasad, learned counsel for the respondents submitted that first of all, the workmen/writ petitioners were not parties to the settlement and secondly, even according to the Conciliation Officer (W.W.2), two sets of workmen were employed, and hence, clause (2) of the settlement which takes care of salary for the period from 1.4.1992 till October, 1994 will not be binding on the petitioners.

8. Inasmuch as all the petitioners have approached the Labour Court by filing petition under section 33-C(2) of the Industrial Disputes Act, before going into the merits of their claim, let us consider the jurisdiction of the Labour Court to decide the issue under the said section. The said section reads as under:

> "33-C(2). Where any workman is entitled to receive from the employer any money or any benefit which is capable of being computed in terms of money and if any question arises as to the amount of money due or as to the amount at which such benefit should be computed, then the question may, subject to any rules that may be made under this Act, be decided by such Labour Court as may be specified in this behalf by the appropriate Government within a period not exceeding three months.
>
> Provided that where the presiding officer of a Labour Court considers it necessary or expedient so to do, he may, for reasons to be recorded in writing, extend such period by such further period as he may think fit."

9. Mr.AL. Somayaji, learned senior counsel pressed into service the following decisions to explain the jurisdiction and under what circumstances the Labour Court grant relief under section 33-C(2) of the Industrial Disputes Act:

(i)P.K.Singh & Ors. v. The Presiding Officer & Ors, 1998 (2) LLJ 363;
(ii)S.B.I. v. Ram Chandra Dubey, 2000 (2) LLJ 1660;
(iii)State of U.P. v. Brijpal Singh 2005(3) LLJ 1003; and
(iv)U.P.S.R.T.C. v. Birendra Bhandari, 2006(3) LLJ 969.

10. In the first decision, P.K.Singh & Ors. v. The Presiding Officer & Ors, 1998 (2) LLJ 363, the Hon'ble Supreme Court, after referring section 33-C(2) of the Industrial Disputes Act, concurred with the interpretation and conclusion made in Central Bank of India Ltd. v. P.S.Rajagopalan etc. (1963(2) LLJ 89) with regard to the said provision in the following words:

> " The legislative history to which we have just referred clearly indicates that having provided broadly for the

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investigation and settlement of industrial disputes on the basis of collective bargaining, the legislature recognised that individual workmen should be given a speedy remedy to enforce their existing individual rights, and so inserted S.33A in the Act in 1950 and added S.33-C in 1956. These two provisions illustrate the cases in which individual workmen can enforce their rights without having to take recourse to S.10(1) of the Act, or without having to depend upon their Union to espouse their cause. Therefore, in construing S.33-C, we have to bear in mind two relevant considerations. The construction should not be so broad as to bring within the scope of S.3-C cases which would fall under S.10(1). Where industrial disputes arise between employees acting collectively and their employers, they must be adjudicated upon in the manner prescribed by the Act, as for instance, by reference under S.10(1). These disputes cannot be brought within the purview of S.33-C. Similarly, having regard to the fact that the policy of the Legislature in enacting S.33-C is to provide a speedy remedy to the individual workmen to enforce or execute their existing rights, it would not be reasonable to exclude from the scope of this section cases of existing rights which are sought to be implemented by individual workmen. In other words, though in determining the scope of S.33-C we must take care not to exclude cases which legitimately fall within its purview, we must also bear in mind that cases which fall under S.10(1) of the Act for instance, cannot be brought within the scope of S.33-C."

11. In S.B.I. v. Ram Chandra Dubey, 2000 (2) LLJ 1660, the following conclusion of the Hon'ble Supreme Court is relevant:

"The principles enunciated in the decisions referred by either side can be summed up as follows:

Whenever a workman is entitled to receive from his employer any money or any benefit which is capable of being computed in terms of money and which he is entitled to receive from his employer and is denied of such benefit, can approach Labour Court under Section 33-C(2) of the Act. The benefit sought to be enforced under section 33-C(2) of the Act is necessarily a pre-existing benefit or one flowing from a pre-existing right. The difference between a pre-existing right or benefit on one hand and the right or benefit, which is considered, just and fair on the other hand is vital. The former falls within the jurisdiction of Labour Court exercising powers under Section 33-C(2) of the Act while the latter does not."

12. In State of U.P. v. Brijpal Singh 2005(3) LLJ 1003, it is held that a workman can proceed under section 33-C(2) of the Industrial Disputes Act only after the Tribunal has adjudicated on a complaint under section 33A or on a reference under section 10 that the order of discharge or dismissal was not justified and has set aside that order and reinstated

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the workman. It is further held that the right to the money which is sought to be calculated or the benefit which is sought to be computed must be an existing one, that is to say, already adjudicated upon or provided for and must arise in the course of and in relation to the relationship between the industrial workman and his employer.

13. In U.P.S.R.T.C. v. Birendra Bhandari, 2006(3) LLJ 969, the Supreme Court held that the benefit which can be enforced under section 33-C(2) is a pre-existing benefit of one flowing from a pre-existing right.

14. It is clear from the provisions as well as the decisions of the Supreme Court that for invoking section 33-C(2) of the Industrial Disputes Act, there must be a pre-existing right. In other words, an undetermined claim cannot be gone into or adjudicated before the Labour Court under section 33-C(2) of the Industrial Disputes Act.

15. With the above principles and background, let us consider whether the writ petitioners were justified in filing claim petitions and are entitled to any relief.

16. It is not in dispute that the petitioners were employed in the appellant factory at Mettur Dam. Because of various reasons including the financial position, the factory was not in a position to resume its work till October, 1994. However, persons in the essential services like, security, water supply, sanitation, electricity, etc. were asked to work from 1.4.1992. Inasmuch as they were required to report for duty and actually worked, which is not in dispute, the question remains, whether they are entitled to full salary for the period they worked. The stand of the Management before the Labour Court as well as before the learned Single Judge was that in view of settlement dated 22.9.1994 (Ex.M-1) under section 12(3) of the Industrial Disputes Act, even the workmen whose services were utilised during the aforesaid period, are not entitled to any compensation other than the amount that were paid to them under any nomenclature such as, ex-gratia, etc. Though such provision has been made in settlement dated 22.9.1994, it is the specific case of the petitioners that they were not parties to the settlement. In other words, they were not represented by their Union.

17. In this regard, let us consider the binding nature of settlement effected under Section 18(3) of the Act. In United Labour Federation, Chennai Vs. Union of India and others, 20021 Labour Law Journal page 799, the following conclusion of the Division Bench of this Court is relevant.

> "There is a sanctity for the statutory settlement entered under the Industrial Disputes Act. Such statutory settlement is binding on the parties thereto. Neither party can wriggle out of the settlement so long as the settlement is in force. In Tata Engineering and Locomotive Company Ltd., Vs. Their Workmen, AIR 1981 SC 2163 : 1981 (4) SCC 627 : 1981 II LLJ 429, there was a settlement between the labour and the management and that was reduced to writing. Some workmen who

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were not parties to the settlement had ratified the same by their individual letters. Under the settlement wage structure was arrived at. Some of the workmen who were parties to the settlement turned back and questioned the settlement on the ground that wage structure was not reasonable, and it could have been on the higher side, and that in any event such workmen who were not originally parties to the settlement, but later on ratified the same were not bound by the settlement. Both the said contentions found favour by the Labour Court, and accordingly, the settlement was set aside. The matter finally reached the Supreme Court, and it was held that merely because some workers have resented later, the settlement cannot be vitiated and that it was binding on all the workers, both the members of the union on the date of settlement, as also the workmen who had ratified the settlement later. It was held by the Supreme Court that the settlement cannot be weighed in any golden scale and the question whether it is just and fair has to be answered on the basis of principles different from those which come into play when an industrial dispute is under adjudication. If the settlement had been arrived at by a vast majority of the concerned workers with their eyes open and was also accepted by them in its totality, it must be presumed to be just and fair and not liable to be ignored while deciding the reference merely because a small number of workers were not parties to it or refused to accept it or because the Tribunal was of the opinion that the workers deserved marginally higher emoluments than they themselves thought they did. It was also held that the settlement has to be accepted or rejected as a whole and it should not be scanned in bits and pieces and hold that some parts are good and acceptable and others bad unless it can be demonstrated that the objectionable portion is such that it completely outweighs all other advantages gained. In Barauni Refinery Pragatisheel Shramik Parishad Ad Vs. Indian Oil Corporation Ltd. & others, AIR 1990 SC 1801 : 1991 (1) SCC 4 : 1991 I LLJ 46 it was held that a settlement under Section 18 of the Industrial Disputes Act arrived in the course of conciliation proceedings with a recognised trade union, will be binding on all workmen of the establishment, even those who belong to minority union, which had objected to the same and to that extent, it departs from the ordinary law of contract. It was held that the object obviously is to uphold the sanctity of settlement reached with the active assistance of the Conciliation Officer and to discourage an individual employee or a minority-Union from scuttling the settlement and that there is an underlying assumption that a settlement reached with the help of the Conciliation Officer must be fair and reasonable and can, therefore, safely be made binding not only on the workmen belonging to the Union signing the settlement but also on others. It was also held that a settlement arrived at in the

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course of conciliation proceedings is put on par with the award made by an adjudicatory authority."

18. In I.T.C. Ltd. Workers' Welfare Association Vs. Management of I.T.C. Ltd and others, 2002 I LLJ 848, the following conclusion are relevant.

> "15. Admittedly, the settlement arrived at in the instant case was in the course of conciliation proceedings and therefore, it carries a presumption that it is just and fair. It becomes binding on all the parties to the dispute as well as the other workmen in the establishment to which the dispute relates and all other persons who may be subsequently employed in that establishment. An individual employee cannot seek to wriggle out of the settlement merely because it does not suit him.
>
> 21. What follows from a conspectus of these decisions is that a settlement which is a product of collective bargaining is entitled to due weight and consideration, more so when a settlement is arrived at in the course of conciliation proceeding. The settlement can only be ignored in exceptional circumstances viz., if it is demonstrably unjust, unfair or the result of mala fides such as corrupt motives on the part of those who were instrumental in effecting the settlement. That apart, the settlement has to be judged as a whole, taking an overall view. The various terms and clauses of settlement cannot be examined in piecemeal and in vacuum."

19. It is clear from the above decisions that a settlement which is a product of collective bargaining is entitled to due weight and consideration and that too, when a settlement is arrived at in the course of conciliation proceedings and in the presence of the Conciliation Officer, such settlement is binding on all the parties and it must be presumed to be just and fair and not liable to be ignored while deciding the reference merely because small number of workers were not parties to it or refused to accept it.

20. Mr. N.G.R. Prasad, learned counsel for the respondents-workmen, by relying on the Division Bench decision of this Court in Workers of Buckinggham and Carnatic Company Vs. Commissioner of Labour and Chief Concilliation Officer and others,1964 (1) LLJ 253, has submitted that since the workmen concerned were not represented and not parties to the settlement, the same is not binding on them. No doubt, in the said decision, the Division Bench of this Court had held that an agreement between one Union and the Management without recourse to conciliation proceedings, will only bind the members of that Union and not all the workmen.

21. In Pudukottai Textiles ltd., Vs. Labour Court, Pudukottai and three others, 1989 (2) LLN 693, the Division Bench after finding that

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the Labour Officer failed to discharge his statutory functions and duties, when he conciliated over the dispute and the same is not in compliance with the provisions of Section 12 of the Act, set aside the settlement arrived at therein.

22. In The Bata Shoe Co., (P) Ltd., Vs. D.N.Ganguly and others. AIR 1961 SC 1158, the Supreme Court has held that the settlement that was arrived at with the assistance of the Conciliation Officer and was considered by him to be reasonable and therefore, had his concurrence, is binding and enforceable like an award. In other words, a mutual agreement was arrived at between the Management and the Union without the assistance of the Labour Commissioner or the Labour Commissioner did not approve the settlement, is not a settlement, which is binding under Section 18 of the Act.

23. In General Manager, Security Paper Mill, Hoshangabad Vs. R.S.Sharma and others, AIR 1986 Supreme court 954, the Supreme Court has held that the Conciliation Officer is expected to assist the management and its workmen to arrive at a fair and just settlement. He has to play a role of an adviser and friend of both the parties and should see that neither party takes undue advantage of the situation. It is on account of this special feature of the settlement, sub-Section (3) of Section 18 of the Industrial Disputes Act, 1947 provides that a settlement arrived at in the course of conciliation proceedings under that Act shall be binding on all the parties to the dispute. The above decision makes it clear that a settlement arrived at by agreement between the employer and the workmen otherwise than in the course of conciliation proceedings, is binding only on the parties to the agreement as provided in Section 18 (1) of the Industrial Disputes Act, 1947, and such settlement is not binding on the other workmen, who are not parties to the settlement.

24. The above decisions make it clear that if the dispute is thrashed out in the presence of the Conciliation Officer, who acted as a fair umpire and assisted both parties viz., management and workers, such decision is binding on all the parties. In the light of the above principle, let us consider the case of the workmen that first of all, they were not parties to the impugned settlement and secondly, whether the Conciliation Officer acted fair and reasonable manner to arrive at an amicable settlement safeguarding the interest of the workmen.

25. It is useful to refer to the notice issued by the management on 18.05.1992 to all the workmen after stating that till February, 1992, the company was paying full wages and salaries to all employees even though there was no production of aluminium and products from April, 1991. Employees at all levels were not required to report to duty from Ist April, 1992. However, the letter informs that in order to maintain essential services like security, water supply, sanitation, electricity etc., and for formulation and preparation of rehabilitation scheme, the company required specified and limited number of employees to report to duty from time to time. No doubt, the said letter makes it clear that

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the above mentioned employees are not entitled to salaries and wages in accordance with the previous terms and conditions of service and the emoluments for the period from Ist April, 1992 till the company reopens, on the basis of rehabilitation scheme, is to be approved by the BIFR and the same will be decided after the reopening of the company.

26. Mr.N.G.R. Prasad, learned counsel appearing for the workmen heavily relied on the following assurance given in the said letter.

> "Whatever has been paid during the interim period as advance will be adjusted towards salary. As whatever is paid during the interim period is only advance which would be adjusted against salary payable as determined after reopening, no income tax will be deducted at source."

27. According to him, the above information makes it clear that the persons worked in essential services are entitled to normal wages. He further contended that inasmuch as the same is an existing right, their petition under Section 33-C(2) of the Industrial Disputes Act before the Labour Court, Salem, is maintainable.

28. On the other hand, Mr.AL.Somayaji, learned Senior Counsel appearing for the Management contended that in view of the Sub Clause 2 of the settlement dated 22.09.1994, even the persons worked to maintain essential services are not entitled to wages or salaries as agreed to. Though the said clause prohibits the workmen from claiming regular wages, it is demonstrated before us that the fact that the persons worked to maintain essential services stand in a different clause and the same was not brought to the notice of the Conciliation Officer. In other words, according to the workmen, the Conciliation Officer has not applied his mind before giving approval for the settlement. It is also stated that he has not acted fairly in safeguarding the interest of all the workmen including those, who were in essential service. It is also brought to our notice that these workmen were not represented before the Conciliation Officer. It is relevant to note that the evidence of G.Swaminathan, who was examined on the side of the workmen. He deposed as follows:

> மனுதாரர்கள் அனைவருக்கும் தொழிற்சங்கம் ஏதும் கிடையாது. நிர்வாகமும், தொழிற்சங்கமும் நடத்திய பேச்சு வார்த்தைக்கு மனுதாரர்கள் யாரையும் அழைக்கவில்லை. மனுதாரர்கள் யாரும் பேச்சு வார்த்தைகளில் கலந்து கொள்ளவில்லை, பேச்சு வார்த்தைகளில் என்ன முடிவு எடுக்கப்பட்டது என்று எங்களுக்கு தெரியாது. அவர்களுக்குள் ஏற்பட்ட ஒப்பந்தம் மனுதாரர்களை கட்டுப்படுத்தாது.'

29. The Conciliation Officer viz., S.Mohan was examined as W.W.2. In his evidence, he deposed as follows:

> ஞ,,,பின்பும் தொழிற் தகராறு எழுப்பிய போது சில தொழிலாளர்கள் கதவடைப்பு பின்பும் வேலைக்குச் சென்றுள்ளதாக என் முன்பு எடுத்துரைக்கவில்லை. கதவடைப்பின் போது

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வேலைக்கு செல்லாத தொழிலாளர்களை பற்றி தான் என் முன்பு சமரச பேச்சு வார்த்தை நடந்தது. நிர்வாகமும் தொழிலாளர்களும் பணிக்குச் செல்பவர்களை பற்றி என் முன்பு ஏதும் எடுத்துரைக்கப்படவில்லை....'

.... பேச்சு வார்த்தையின் போது ஆலைக்கு சென்று கதவடைப்பின் பின்பும் ஆலைக்கு செல்லும் தொழிலாளர்க்ள ஒரு பகுதி என்றும், ஆலைக்கு செல்லாத ஆட்கள் ஒரு பகுதி என்றும், என் முன்பு யாரும் தெரிவிக்காததால், அதை பற்றி நான் தெரிந்து கொள்ளவில்லை....'
.... என் முன்பு எழுப்பிய சங்கங்கள் கதவடைப்புக்கு பின்பும் பணிக்கு செல்பவர்களை குறித்து கோரிக்கை ஏதும் எழுப்பபடவில்லை....'

'.... நிர்வாகம் கதவடைப்பிற்கு பின்பு பணிக்கு செல்பவர்களை குறித்து சம்பளம் கொடுப்பது குறித்து வாக்குறுதி பற்றி எனக்கு தெரியாது,....'

'... நிர்வாகத்திற்கும், கதவடைப்பிற்கு பின்பு வேலைக்கு செல்பவர்களுக்கும், பணிக்கு செல்லாதவர்களுக்கும் கருத்து வேறுபாடு பற்றி எனக்கு தெரியாது....'

30. The above statement of W.W.2, who is none else than the Conciliation Officer, makes it clear that he was not aware of or it was not brought to his notice that one group of workers worked from the period of closure for maintaining the essential service. It is also clear that he was not aware or possessed with the facts that two different sets of workers were in existence in the company. In those circumstances, as rightly pointed out by the learned counsel Mr.N.G.R. Prasad that W.W.2, the Conciliation Officer had no occasion to apply his mind to the above mentioned relevant facts particularly the fact that a section of workers attended the work to maintain essential services and were assured salary after the reopening of the factory. The decisions referred to by us in the earlier paragraphs make it clear that the Conciliation Officer has to investigate the dispute and do all things as to induce the parties, to arrive at a fair and amicable settlement of the disputes. In other words he has to investigate the dispute from one corner to other and arrive at fair and amicable settlement. The function of conciliator is to bring the workers together, enter into the discussions on the points in dispute and discover means of settlement acceptable by both. Under the Industrial Disputes Act, the Conciliation officer is an independent agency created with a view to promote industrial piece, Governmental facilities in the process of collective bargaining. His presence and participation at the discussions often facilitate an objectivity of approach in the matter of bargaining between the Management and the Labour. In view of the the contents of the notice dated 19.05.1992, which we have adverted to in the earlier paragraphs and of the admission of the Conciliation officer-WW2 that he has not assessed the two sets of workmen, we are of the view that it cannot be claimed that the Conciliation Officer acted fairly and safeguarded the interest of all the workmen including the writ petitioners.

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31. It is also relevant to refer the evidence of one Subbiah, who was examined on the side of the Management as MW1. In his examination, he has admitted that at the relevant time, two sets of

workmen were working in their company. He deposed as follows:

> ஞ,,நிறுவனத்தை பொறுத்த வரை 01.04.1992 வரை பணிக்கு வந்தவர்கள் என்று ஒரு பகுதி. அந்த தேதி முதல் பணிக்கு வராதவர்கள் ஒரு பகுதி..'

it is clear that MW.1 had admitted that there were two fractions of persons among the workers at the relevant time.

32. In such circumstances, as rightly observed by the learned single Judge, the Conciliation Officer had not applied his mind to the claim of the petitioners-workers, which has been over looked by the Labour Court. Though it is settled law that the workman cannot challenge the settlement in an application under Section 33-C(2) of the Act, in view of the infirmities pointed above and of the fact that the settlement dated 22.09.1994 under Section 12(3) of the Act had deprived a substantial portion of their salary for the period from 01.04.1992 to October, 1994, the learned single Judge is perfectly right in quashing the order of the Labour Court and setting aside the same.

33. In these circumstances, we are in agreement with the conclusion arrived at by the learned single Judge and we are unable to accept the claim of the appellant/Management. Consequently, the writ appeal fails and the same is dismissed. No costs.

raa

Sd/-
Asst.Registrar

/true copy/

Sub Asst.Registrar

To,
1.The Presiding Officer, Labour Court,
Salem.
+1 cc to Mr.Row & Reddy Advocate Sr.No.16837
+1 cc to T.S.Gopalan & Co. Advocate Sr.No.16874.

MSM(CO)
dcp/23.3.07

W.A.No.1140 of 2002

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